

**BEFORE THE STATE BOARD OF MEDIATION  
STATE OF MISSOURI**

INTERNATIONAL ASSOCIATION OF	)	
FIRE FIGHTERS, LOCAL 2665,	)	
PROFESSIONAL FIRE FIGHTERS OF ST.	)	
LOUIS COUNTY,	)	
	)	
Petitioner,	)	
	)	
v.	)	Public Case No. R 87-017
	)	
RIVERVIEW FIRE PROTECTION	)	
DISTRICT,	)	
	)	
Respondent.	)	

**JURISDICTIONAL STATEMENT**

This case appears before the State Board of Mediation upon the filing by International Association of Fire Fighters, Local 2665, of a petition for certification as public employee representative of certain employees of the Riverview Fire Protection District. A hearing was held on July 13, 1987, in Clayton, Missouri, at which representatives of Local 2665 and the Riverview Fire Protection District were present. State Board of Mediation Chairman Mary Gant, employer member Norman Litz, and employee member David Langston heard the case. The State Board of Mediation is authorized to hear and decide the issues concerning appropriate bargaining units by virtue of Section 105.525, RSMo 1978.

At the hearing, the parties were given full opportunity to present evidence. The Board, after a careful review of the evidence, sets forth the following findings of fact and conclusions of law.

## **FINDINGS OF FACT**

The Riverview Fire Protection District employs eighteen fire fighters, including the chief, six captains and eleven privates. The chief reports directly to the Board of Directors which has final authority in personnel and administrative decisions. The fire chief is the only employee who works a 40 hour week. Generally, the chief is on call 24 hours a day and maintains an office from 8:00 a.m. to 4:30 p.m., five days a week. The chief is the administrative head of the district and is present at all structural fires. Once at the fire scene, he is in charge of the fire effort, but does not fight alongside the other fire fighters as do the captains.

Each of the six captains is assigned to work with a crew. The captains, with the privates, work 24 hours shifts. While at work the captains use the same sleeping quarters as the privates. Similarly, the kitchen facilities are used by both captains and privates, with each man cooking his own meal. The captains and privates report to duty at 8:00 a.m. They begin their daily routine at 8:30 a.m. which entails general housecleaning and the checking of equipment. Traditionally the captains concentrate on cleaning chores in the kitchen and the firehouse while the privates attend to the fire equipment.

In the event of a fire, the firehouse is notified by radio by which they are given the address of the fire and what type of call is involved. The captain generally rides in the right front seat of the pumper, while one of the privates is the driver, with the remaining private sitting in a jump seat behind the driver. Enroute to the fire, the private receives little direction from the captain in that most privates know the district. The captain first arriving at the fire scene is initially in charge. He makes the decisions concerning how to best extinguish the fire. Once those decisions are made, the captains fight alongside the other fire fighters.

The captain's role in connection with hiring new employees is limited to handing out applications to prospective employees and asking basic questions such as whether the applicant can operate a manual shift motor vehicle. Although there is evidence that a captain recommended that an employee be hire approximately six years ago, other recently hired employees have been volunteer fire fighters promoted by the chief. The record as a whole does not clearly establish that the captains effectively recommend the hiring of other employees.

There is no evidence that the captains play any role in the transfer of other employees. Further, the captains are not significantly involved in the discharge of other employees. The fire chiefs testified that should an employee's work performance require discharge, he would make the recommendation to the Board of Directors which would make the final decision. However, the record indicates that no employee has been discharged since the chief was promoted to his position in 1968.

Concerning discipline, evidence was presented at the hearing concerning only two incidents. The first involved a problem at a fire scene that stemmed from a private's inability to get the pumper to work properly to extinguish a car fire. The captain present at the scene felt that the absence of water was due to the private's failure to place the pumper in the proper gear. The following day the captain was questioned by the fire chief concerning the delay in getting water. The captain explained that he felt that the water delay was an isolated incident, which did not require any discipline of the employee involved. After his own investigation, the chief decided that the private involved would not operate the pumper.

A second incident involved a private whom the captains felt was not qualified to drive the fire truck. The chief discussed the matter with two captains who recommended that the private not be allowed to drive the truck. The chief testified that rather than

accept the captains' recommendation, he chose to allow the private to continue driving the truck with hopes that further training experience would improve the private's skills.

Concerning promotion, the evidence adduced at the hearing indicated that for the past two years, the captains have been required to complete evaluation forms concerning privates. These evaluation forms were modeled from forms used by other districts. On the evaluation forms, the captains are required to express their opinion concerning such matters as the private's initiative, work attitude, quality of work, and fire fighting knowledge. The captains originally were required to complete the evaluation forms every six months but began submitting them bi-monthly in December of 1986.

There is no evidence that the evaluations play a significant role in the promotion of a private. When questioned on direct examination if he ever discussed with the captains how a private was progressing, the chief responded that he recalled doing so only once in his 30-year career. Evidence concerning the promotion of a private in 1983 indicated that the private promoted was the employee who tested highest on a written exam. The test used in the promotion was made up of various written questions submitted by the existing captains. The chief and captains agreed that the employee with the highest score would be promoted to captain.

The captains attend a monthly officers' meeting at which only the chief and the captains are present. At those meetings there are general discussions concerning the fire district and fire fighting techniques. There is no evidence that any confidential matters concerning employee-employer relations are discussed at the officers' meetings. To the contrary, the captains routinely report to the privates what, if any, decisions were made during the meetings.

The captains have no authority to grant vacation time in that it is established according to seniority whereby a private with greater seniority would have preference

over a captain. Should a conflict arise concerning vacations, the chief would make the final determination. Captains are paid \$1.00 per hour more than privates with commensurate years of service. However, because of seniority differences, some privates are paid at a higher rate than the captains.

### **CONCLUSIONS OF LAW**

Local 2665 has petitioned to be certified as public employee representative of a bargaining unit comprised of all Riverview Fire Protection District employees, excluding the chief. The Fire District contends that the captains are supervisory employees and, therefore, should be excluded from the bargaining unit. The District further argues that the captains should be excluded from the unit because they are confidential employees. The first issue to be addressed is whether the captains possess true supervisory authority which would require their exclusion from the appropriate bargaining unit. An appropriate bargaining unit is defined by Section 105.500 (1) RSMo 1978 as:

A unit of employees at any plant or installation or in a craft or in a function of a public body which establishes a clear and identifiable community of interest among the employees concerned.

Missouri statutory law does not provide further guidelines for determining what constitutes a "clear and identifiable community of interest." However, the Board has consistently held that supervisors cannot be included in the same bargaining unit as the employees they supervise. St. Louis Fire Fighters Association, Local 73 v. City of St. Louis, Case No. 76-013 (SBM 1976); Golden Valley Memorial Hospital v. Missouri State Board of Mediation, 559 S.W.2d 581 (Mo. App. 1977). In determining the supervisory status of employees within bargaining units, the Board has consistently examined the following factors:

- (1) The authority to effectively recommend the hiring, promotion, transfer, discipline, or discharge of employees.
- (2) The authority to direct and assign the work force, including a consideration

of the amount of independent judgment and discretion exercised in such matters.

- (3) The number of employees supervised, and the number of other persons exercising greater, similar or lesser authority over the same employees.
- (4) The level of pay including an evaluation of whether the supervisor is paid for a skill or for supervision of employees.
- (5) Whether the supervisor is primarily supervising an activity or primarily supervising employees.
- (6) Whether the supervisor is a working supervisor or whether he spends a substantial majority of his time supervising employees.

The Fire District contends that based upon the above factors, the captains are, in fact, supervisors. The Fire District argues that captains have full authority and responsibility for the operation of the fire stations and fire fighting operations during their shifts. Additionally, the fire district asserts that the captains effectively recommend the hiring and promotion of other employees. For the reasons set out below, the fire district's position is rejected.

The record clearly indicates that the captains play no role in the hiring of new employees other than providing a prospective employee with an application. Further, the record is devoid of any evidence that a captain may effectively recommend the discharge, transfer or discipline of employees. Concerning promotion, it is clear that the evaluations are reviewed by the chief. However, the record does not indicate that those evaluations have ever been used in the promotion, discharge or discipline of another employee. Should the fire district's argument concerning the evaluations be accepted, then any small fire district could impose supervisory status on their employees by merely requiring them to complete evaluations on subordinate employees. Consequently, the Board must find that the evaluation alone is not sufficient to ascribe true supervisory status to the captains.

Concerning the captains' authority to direct privates at the fire house and the fire scene, the Board is unconvinced that this authority is the authority of a true supervisor. The Board has consistently held that the mere direction of fire fighters is authority more analogous to that of a lead man rather than that of a true supervisor. See St. Charles Fire Fighters, Local 1921 v. City of St. Charles, Case No. 79-024 (SBM 1979); Fire Fighters of St. Louis County, Local 2665 v. Richmond Heights Fire Department, Case No. 81-003 (SBM 1981). Although the captains do direct the fire fighters at the scene, they exercise little, if any, independent judgment other than deciding what tactics to employ in extinguishing a fire in that those decisions are born from years of training and experience. Without question, the captains primarily supervise the activity of fighting fires as opposed to supervising subordinate employees.

Further supporting the Board's conclusion that the captains are not true supervisors, is that the captains work alongside the other employees not only at the fire scene but also at the fire house, thus indicating that the captains are working supervisors. In view of the foregoing, the Board concludes that the captains' authority is closer to that of a lead man than that of a true supervisor and, therefore, should not be excluded from the bargaining unit as being supervisory employees.

The Fire District's second argument concerns whether the captains are confidential employees who must be excluded from the appropriate bargaining unit. The Fire District argues that the captains act in a confidential capacity to the chief in the formulation, determination and effectuation of management policy in the field of labor relations. We disagree. In Missouri National Education Association v. Belton School District, Public Case No. 81-015 (SBM 1982), the Board ruled that an employee was a confidential employee to be excluded from the bargaining unit if there exists a confidential relationship between that employee and a managerial or supervisory

employee. In applying that test, the Board rejected the "labor-nexus test" as applied by the NLRB. Upon reexamination of the existing law, the Board hereby adopts the labor-nexus test as used by the NLRB. That test requires that an employee be considered a confidential employee if that individual assists and acts in a confidential capacity to persons who formulate, determine and effectuate management policies in the field of labor relations. Viewing the record as a whole, the Board is not convinced that the captains do work in a confidential capacity to the fire chief. Although the captains do evaluate the privates on a bi-monthly basis, and are involved at the monthly officers' meetings, the record does not support the conclusion that the captains work in a confidential capacity with the chief. To the contrary, the evidence indicates that the captains generally would share with the privates any information provided them at the monthly officers' meetings. Further, the captains' involvement in the evaluation of the employees is not sufficient to ascribe confidential status to those employees. Accordingly, it is ruled that under the labor-nexus test, the captains cannot be considered confidential employees.

In view of the foregoing, the Board concludes that the captains are neither true supervisors nor confidential employees that would require their exclusion from the appropriate bargaining unit.

### **DECISION**

It is the decision of the State Board of Mediation that an appropriate bargaining unit of employees is as follows: all employees of the Riverview Fire Protection District excluding the chief.

### **DIRECTION OF ELECTION**

An election by secret ballot shall be conducted by the Chairman of the State Board of Mediation, or its designated representative, among the employees in the unit



found appropriate, as early as possible, but not later than thirty days from the date below. The exact time and place will be set forth in the notice of election to be issued subsequently, subject to the Board's rules and regulations. Eligible to vote are those in the unit who were employed during the payroll period immediately preceding the date below, including employees who did not work during the period because of vacation or illness. Ineligible to vote are those employees who quit or were discharged for cause since the designated payroll period and who have not been rehired or reinstated before the election. Those eligible to vote shall vote whether or not they desire to be represented for the purposes of exclusive representation by Local 2665, International Association of Fire Fighters.

It is hereby ordered that the Fire District shall submit to the Chairman of the State Board of Mediation, as well as to Local 2665, within seven days from the date of this decision an alphabetical list of names and addresses of employees in the unit determined above to be appropriate who were employed during the payroll period immediately preceding the date of this decision.

Signed this 16th day of October, 1987.

STATE BOARD OF MEDIATION

(SEAL)

/s/ Mary L. Gant  
Mary L. Gant, Chairman

/s/ David Langston  
David Langston, Employee Member

DISSENT

/s/ Norman Litz  
Norman Litz, Employer Member